

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STEPHEN McCOLLUM, and SANDRA §
 McCOLLUM, individually, and STEPHANIE §
 KINGREY, individually and as independent §
 administrator of the Estate of LARRY GENE §
 McCOLLUM, §

PLAINTIFFS

V.

BRAD LIVINGSTON, JEFF PRINGLE, §
 RICHARD CLARK, KAREN TATE, §
 SANDREA SANDERS, ROBERT EASON, the §
 UNIVERSITY OF TEXAS MEDICAL §
 BRANCH and the TEXAS DEPARTMENT OF §
 CRIMINAL JUSTICE. §

DEFENDANTS

CIVIL ACTION NO.
4:14-cv-3253
JURY DEMAND

**PLAINTIFFS' RESPONSE TO TDCJ'S MOTION TO DESIGNATE DEAN
RIEGER AS A LATE EXPERT &
PLAINTIFFS' MOTION TO STRIKE LATE EXPERT DESIGNATIONS OF
LANNETTE LINTHICUM, PHYLLIS MCWHORTER, ROBERT WILLIAMS,
DEAN RIEGER, AND JOHN NIELSEN-GAMMON**

Exhibit 4

AFFIDAVIT OF PHYLLIS McWHORTER

STATE OF TEXAS

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§

COUNTY OF WALKER

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I am Phyllis McWhorter, RN. I am over 21 years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts as stated herein. I am receiving no compensation other than my regular salary for the preparation of this Affidavit. I am qualified to provide the data and information in this Affidavit based on my education, training, and experience.

I have been a registered nurse in good standing (Board of Nurse Examiners for the State of Texas License #703670) since February 2004 when I graduated from Excelsior College, Albany, NY, with an Associate's Degree in Science (Nursing). Prior to that I practiced for three years as a licensed vocational nurse. From April 2005 to the present I have worked for the Texas Department of Criminal Justice (TDCJ) Health Services Division in the Office of Health Services Liaison (HSL). I have been the Manager IV in that department since November 2005. Among my responsibilities is the supervision of nurses who establish and maintain liaison with county jail officials, facility healthcare providers and other departments within TDCJ and Correctional Managed Health Care (CMHC), to facilitate intra-agency transportation and assignment of offenders that is consistent with their healthcare needs. Additionally, this office performs audits of offender hospital and infirmary stays and discharges; and provides secondary screening of offenders for the Rehabilitation Programs Division. I am a member of the following committees: TDCJ/CMHC Policy and Procedure Committee, TDCJ Employee Emergency Transfer Board, TDCJ Quality Assurance Committee, TDCJ/CMHC System Leadership Committee, TDCJ Capacity Committee, and the TDCJ/CMHC Infirmary Subcommittee.

Prior to my work in HSL I was the Coordinator of Infectious Diseases (CID) nurse at the TDCJ Goree Unit (October 2004 through April 2005); an instructor at the Joe G. Davis School of Vocational Nursing (March 2004 through October 2004); and a staff nurse at Huntsville Memorial Hospital in the Intensive Care Unit (March 2002 through March 2004). I am a member of the American Nursing Association; the Texas Nursing Association, the American Correctional Association, and the Texas Corrections Association. For the last 10 years I have been the Manager IV in the Texas Department of Criminal Justice (TDCJ) Office of Health Services Liaison (HSL). Since its creation in 2010, part of my duties include maintaining the "Temperature Extremes" database. This database holds incidents of heat cramps, heat exhaustion, heat stroke and neuroleptic malignant syndrome that are reported to this office by unit-based healthcare staff.

Per Correctional Managed Health Care (CMHC) Policy D-27.2, "Heat Stress" (attached) Section IX, "Reporting", *"Facility medical staff shall complete the Heat-Related Illness Reporting Form (Attachment C, attached) for each case of heat cramps, heat exhaustion, heat stroke or neuroleptic malignant syndrome. The completed form is e-mailed to HSLIAISON via e-mail or faxed to the Office of Health Services Liaison at 936-437-3599."*

The Heat-Related Illness Reporting Form records the following information about the offender and the event: Name; TDCJ number; Unit of assignment; Date of incident; Medication history (specifically those medications to which heat precautions apply); Contributing conditions (chronic conditions with which the offender has been diagnosed); Environmental factors (where the offender was at the time he/she became ill); HSM-18 restrictions in place at the time of the incident; Treatment (was the offender seen in a hospital emergency department, admitted to a hospital, or did the offender expire as a result of the event); and, Provider's diagnosis (specifically, heat cramps, heat exhaustion, heat stroke, neuroleptic malignant syndrome).

In 2010, 2011 and 2012, all incidents of heat cramps, heat exhaustion, heat stroke and neuroleptic malignant syndrome reported to HSL were entered in the database. This data was collected primarily through Emergency Action Center (EAC) reports and emails sent to HSL by unit medical staff.

In 2012 it came to my attention that not all cases of heat cramps, heat exhaustion, heat stroke and neuroleptic malignant syndrome that were reported to HSL were accurate. Most often these cases did not have documentation in the electronic medical record to support the diagnosis that was reported to HSL. In late 2012 the Health-Related Illnesses Reporting Form was developed and added to the Heat Stress policy via the Correctional Managed Health Care Policy and Procedure Committee. The form went into use in 2013.

Since that time, upon HSL's receipt of a completed Heat-Related Illness Reporting Form, I search the offender's electronic health record (EHR) for, and print a copy of, documentation related to the event. I verify the content of the reporting form and if the report meets the diagnosis criteria (heat cramps, heat exhaustion, heat stroke, or neuroleptic malignant syndrome). If so, I enter the case in the "Temperature Extremes" database. Reports that do not meet this criteria are not entered into the database, but the reporting form is retained with the words "Not Reportable" written at the top of the form.

If the reporting form does not meet the diagnosis criteria, or if there is substantiating documentation missing, I email the unit medical provider in an attempt to obtain it. If review of the offender's HSM-18 shows that it does not include restrictions that may pertain to the offender, this is brought to the provider's attention via email.

HSL still receives daily EAC reports; however, the only data used for the reports HSL generates, is that which is obtained via the reporting system established in CMHC Policy D-27.2, which requires incidents of heat-related illnesses to be reported directly to HSL by unit medical staff.

The figures in charts A-C (charts B and C are attached) reflect the data collected at Health Services from 2010 through 2015. Chart A below lists the number of prison units and average number of offenders who were incarcerated during this six-year period.

CHART A

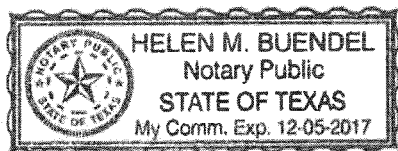
Calendar Year	Number of TDCJ Facilities	Average Number of Offenders	Number of Heat-Related Illnesses Reported to HSL
2010	112	154,476.49	45
2011	111	156,040.29	163
2012	111	153,677.30	84
2013	109	150,744.61	74
2014	109	150,344.51	61
2015	109	149,162.20	54

Further affiant sayeth not."



Phyllis McWhorter, RN
Manager IV, TDCJ Office of Health Services Liaison

SWORN AND SUBSCRIBED BEFORE ME, by the said Phyllis McWhorter, RN, on this the 13th day of October, 2015, to certify which witness my hand and seal of office.




Notary Public in and for
The State of Texas

My Commission Expires:

12-05-2017

CHART B: Heat-Related Illnesses (HRI*) Reported to TDCJ Health Services 2010 to 2015

Calendar Year	2010	2011	2012	2013	2014	2015
Total TDCJ Units	112	111	111	109	109	109
Average Number of TDCJ Offenders	154,476	146,040	153,677	150,745	150,345	149,162
Total Number of HRI Reported	45	160	85	74	61	54
Number of HRI Offender Deaths (Autopsy)	0	10	2	0	0	0
HRI Occurring Inside	16	100	30	19	18	31
HRI Occurring Outside	29	60	55	55	43	23
Percentage HRI Occurring Inside	0.010	0.068	0.020	0.013	0.012	0.021
Percentage HRI Occurring Outside	0.019	0.041	0.036	0.036	0.029	0.015
Percentage Total HRI	0.029	0.011	0.055	0.049	0.041	0.036

*Heat-Related Illnesses (HRI) are defined as heat cramps, heat exhaustion (or heat prostration), heat stroke and neuroleptic malignant syndrome.

2012: A second death was added to this report after one offender's autopsy determined that his death was heat-related; however, a HRI was not reported at the time of the event.

Initially 163 cases were recorded in 2011. Review of these records revealed duplicate reporting, which has been deleted in this report.

Chart C: Detail on Where Reported HRI Occurred

Calendar Year	2010	2011	2012	2013	2014	2015
Inside Chow Hall	3	6	1	N/A	2	3
Inside Commissary Line	N/A	2	1	N/A	N/A	N/A
Inside Housing	11	81	22	12	9	15
Inside Pill Window	N/A	N/A	1	N/A	N/A	N/A
Inside Recreation	N/A	N/A	N/A	N/A	2	2
Inside School	1	1	1	N/A	1	N/A
Inside Shower	N/A	1	N/A	1	N/A	1
Inside Work	1	9	4	5	4	10
Inside Other¹	N/A	N/A	N/A	1	N/A	N/A
Outside Chain Bus	N/A	5	N/A	4	N/A	N/A
Outside Commissary Line	N/A	2	N/A	N/A	N/A	1
Outside Pill Window	N/A	4	N/A	N/A	N/A	1
Outside Recreation	4	22	13	18	14	8
Outside Visitation	N/A	N/A	1	1	1	N/A
Outside Work	25	27	41	31	27	12
Outside Other²	N/A	N/A	N/A	1	1	1
Total Number of HRI	45	160	85	74	61	54

1. Inside Other: 2013 - Hallway.

2. Outside Other: 2013 - Sidewalk; 2014 - Walking to trusty camp; 2015 - Walkway.